

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TERRI PECHNER-JAMES  
And SONIA FERNANDEZ,,

Plaintiffs,

VS. C.A. NO. 03-12499-MLW

CITY OF REVERE; THOMAS  
AMBROSINO, MAYOR; CITY OF  
REVERE POLICE DEPARTMENT,  
TERRENCE REARDON, CHIEF;  
BERNARD FOSTER, SALVATORE  
SANTORO, ROY COLANNINO,  
FREDERICK ROLAND, THOMAS DOHERTY,  
JOHN NELSON, JAMES RUSSO,  
MICHAEL MURPHY, and STEVEN FORD,

Defendants.

ATTORNEY CONFERENCE before Dawn J. Cormier  
Bourn, a notary public in and for the  
Commonwealth of Massachusetts, on May 12, 2006,  
commencing at 10:00 A.M. at the offices of  
Reardon, Joyce & Akerson, 397 Grove Street,  
Worcester, Massachusetts.

ORIGINAL

1     A P P E A R A N C E S :

2     FOR THE PLAINTIFF:

3     JAMES S. DILDAY, ESQ.  
4     GRAYER & DILDAY  
5     27 School Street  
6     Boston, Massachusetts 02108

7     FOR THE DEFENDANT, CITY OF REVERE; THOMAS  
8     AMBROSINO, MAYOR; CITY OF REVERE POLICE  
9     DEPARTMENT, TERRENCE REARDON, CHIEF:

10    WALTER H. PORR, JR., ESQ., and  
11    PAUL CAPIZZI, ESQ.  
12    Office of the City Solicitor  
13    City Hall, 281 Broadway  
14    Revere, Massachusetts 01251

15    FOR THE DEFENDANTS, BERNARD FOSTER, SALVATORE  
16    SANTORO, ROY COLANNINO, FREDERICK ROLAND,  
17    THOMAS DOHERTY, JOHN NELSON, JAMES RUSSO,  
18    MICHAEL MURPHY AND STEVEN FORD:

19    MICHAEL AKERSON, ESQ., and  
20    JOHN VIGLIOTTI, ESQ.  
21    REARDON, JOYCE & AKERSON  
22    387 Grove Street  
23    Worcester, Massachusetts 01605  
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I N D E X

	PAGE
PROCEEDINGS	4

EXHIBITS

	PAGE
1 MAY 9TH LETTER	17
2 MAY 10TH LETTER	17
3 MAY 10TH LETTER	17
4 MAY 11TH LETTER	17

P R O C E E D I N G S

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MR. AKERSON: It's just 10:00 on the nose on 12th of May here at my office. My name is Michael Akerson for the record. Mr. Dilday is here with Ms. Fernandez for a continuation of her deposition.

I just wanted to address a couple of the comments that came up in a letter that you had sent out yesterday, Mr. Dilday, May 11th of 2006, received in our firm mid afternoon on May 11th. A couple of comments.

I think I need to state for the record that, first off, we had scheduled for May 10th -- excuse me -- May 11th, for Terri Pechner-James here, and you did indicate Ms. Fernandez would be substituted. We didn't know why, and that's why Mr. Vigliotti had called your office on the 9th, to inquire, you know, is there a problem? Is there something? Or what the situation is.

We didn't hear from you, so we weren't sure, given your request and in turn Mr. Vigliotti's request for the reasons why we needed substitution, and that was -- and also in

1 your letter dated May 11th you put in there that  
2 we agreed to substitute Ms. Fernandez. We  
3 actually didn't agree to that. I know  
4 Mr. Vigliotti and myself did not, and my  
5 understanding is the City didn't as well,  
6 inasmuch as I was taking the laboring or trying  
7 to coordinate the depositions just to get them  
8 done in accord with Judge Sorokin's court order.

9 But did somebody agree to substitute  
10 Ms. Fernandez, Jim?

11 MR. DILDAY: Well, it was my  
12 understanding that it would be done. You know, I  
13 sent my letter out on the 9th to try to give you  
14 adequate time and let you know that Ms. Fernandez  
15 would be available, that Ms. Pechner-James would  
16 not. She had some personal issues she called me  
17 about with her child.

18 MR. AKERSON: The letter from you on  
19 May 9th did not indicate in any sense why.

20 MR. DILDAY: And I understand that  
21 because that letter was drafted on the run when I  
22 called my secretary to draft it and send it to  
23 you.

24 MR. AKERSON: Okay. We wanted some

1 clarification because of a couple things. One,  
2 who is doing the deposition. I think I mentioned  
3 to you earlier --

4 MR. DILDAY: I know, you do Pechner.

5 MR. AKERSON: I was doing Terri and  
6 John Vigliotti was doing Sonia. Just because of  
7 the dynamics here in our office, we found that  
8 would be easier, to address it that way. So from  
9 our perspective we needed to know in advance  
10 about who -- in terms of prepping, who was going  
11 to need to be available for the deposition, which  
12 is why Mr. Vigliotti had called your office to  
13 confirm.

14 MR. DILDAY: Let me respond to that by  
15 saying that I understand how you two are doing  
16 it, and I thought that since we blew the May 4th  
17 depo, that the preparation for Sonia wouldn't be  
18 that extensive because that preparation had been  
19 done prior thereto, and I just knew that Terri  
20 Pechner-James had called me and left three or  
21 four messages that she could not do it on the  
22 11th.

23 And I was in court everyday this week,  
24 except for today, and so I had the letter sent

1 out to you. You'll probably notice that they're  
2 all sent out and my actual signature is on none  
3 of them.

4 MR. AKERSON: Yeah, there are some  
5 initials. And also, in terms of our firm, we do  
6 call you back --

7 MR. DILDAY: I know you do.

8 MR. AKERSON: -- and try to  
9 communicate and reach out to you.

10 MR. DILDAY: You know, that's clear,  
11 and when I tried to get to John I was in court  
12 and there was miscommunication because he didn't  
13 get my cell phone number.

14 MR. AKERSON: Yeah, the last few  
15 digits were inaudible, and that's why he promptly  
16 called your office back to say he couldn't get  
17 through. What he got was a voice mail from your  
18 office.

19 But you also say that you were never  
20 consulted about -- in your May 9th letter you  
21 were never consulted about what individuals would  
22 be deposed which days. You and I had spoken and  
23 we had agreed on the dates, and though Judge  
24 Sorokin's order indicates from 10:00 in the



1 morning to 5:00 p.m., I know you said you were  
2 busy in court, so as an accommodation I said  
3 we'll do them in the afternoon and our firm would  
4 travel to Revere to do the deposition. So I  
5 think we had accommodated your scheduling in  
6 allowing for that to happen.

7 MR. DILDAY: Well, yes and no. On  
8 that issue I say yes and no because those dates  
9 that were the afternoon dates were dates that you  
10 and I talked about where I said I will do these  
11 dates and I need to do them in the afternoon  
12 because each date that I've given you is a date  
13 that I'm in court in the morning.

14 Normally, when I go to court in the  
15 morning, I try not to do a deposition or  
16 something else and be out of the office all day,  
17 but trying to make this thing work, I said okay,  
18 I'll schedule these on my court dates.

19 MR. AKERSON: Rather than following a  
20 court order which was 10:00 in the morning till  
21 5:00 in Worcester.

22 MR. DILDAY: Otherwise, if we had to  
23 follow that court order from 10:00 to 5:00, we  
24 would never get anything done except those that

1 we expressly agreed upon earlier and the May 30th  
2 that you and I had talked about.

3 MR. AKERSON: I agree. We did bend  
4 because our firm is the one who is now travelling  
5 despite us taking the laboring of establishing  
6 and setting up these depositions, so it was an  
7 imposition on our office as well.

8 MR. DILDAY: I understand that, and  
9 let me say this, Michael. I don't have a problem  
10 with that because you guys have been more than  
11 accommodating.

12 MR. AKERSON: The other thing is, you  
13 indicated that we didn't consult with you which  
14 individuals would be deposed on the afternoon  
15 dates, and my memory is clear that in the  
16 conversation with you I raised it up to you once  
17 we had locked in some afternoon dates. Once I  
18 had raised to you and we spoke on the telephone  
19 that we'd talk about who you wanted to do, which  
20 plaintiff you wanted to do which afternoons,  
21 given the time limitations Judge Sorokin has  
22 imposed on this case, you had indicated to me  
23 that, you know, they're not working so, whichever  
24 plaintiff, you'll get them there.

1 MR. DILDAY: That's true, and I don't  
2 disagree with that. My only issue is that there  
3 was a problem with Terri doing the 11th.

4 MR. AKERSON: As John Vigliotti's  
5 letter to you of the day before, that would be  
6 May 10th, indicates, you know, sometimes  
7 circumstances do arise, but sometimes if you just  
8 explain them a little bit, that Ms. Pechner had  
9 another obligation, a doctor's appointment, a kid  
10 thing, whatever, then we'd make an accommodation.

11 We don't need to know the great detail  
12 what it is, but just substituting without any  
13 discussion on it or at least information, it made  
14 it difficult for us to know what lawyer to make  
15 available or to juggle other things around,  
16 because we actually, I affirm to you here today,  
17 Mr. Dilday, we do have other cases here in the  
18 office.

19 MR. DILDAY: Oh, I know you do. If  
20 this were your only case, you'd be in trouble.

21 MR. AKERSON: Indeed.

22 MR. DILDAY: That was a little bit of  
23 sarcasm, you know.

24 MR. AKERSON: Your letter did indicate

1       that --

2                   MR. DILDAY: Disregard that.

3                   MR. AKERSON: -- you have a busy  
4       schedule, but suggested that we didn't have much  
5       cases, but I assure you we have many other  
6       things, which is part of the reason why John  
7       Vigliotti and myself decided to split them up, to  
8       make ourselves available, so we could get this  
9       thing going.

10                   The other thing that you mentioned in  
11       here in terms of if you and your colleagues are  
12       serious about getting this case to trial instead  
13       of stalling and creating non-issues to run to  
14       Magistrate Sorokin about, I don't think that our  
15       firm has done that at all. In fact, the stuff we  
16       have brought to Judge Sorokin he has allowed,  
17       meaning he's agreed with us, so I would have to  
18       strongly disagree with that.

19                   In fact, I don't think we have  
20       anything pending right now in front of Judge  
21       Sorokin. Our last filing with Judge Sorokin was  
22       on 4/21/06 in compliance -- let me finish,  
23       please -- in compliance with the judge's order  
24       when we were in court on April 11th, and he

1 followed up with a written order on April 12th.  
2 The judge ordered us to give him a list of  
3 deposition dates. He wanted to know where.

4 So I took the laboring on that to  
5 create a document that I filed on April 21st,  
6 which has a list of a variety of depo dates in  
7 May, May 4, 5, 11, 12, 16, 18, 19, 25, 26 and 30.  
8 So I took the laboring to comply with the order  
9 in that case. So I don't think we're stalling or  
10 creating non-issues in running to him about. In  
11 fact, as of this moment, I don't think we have  
12 anything pending before the judge for him to make  
13 any determination, so I also have to disagree  
14 with that.

15 Moreover, I didn't know that you would  
16 have gone -- your letter of May 11th says you  
17 would have gone till 6:00 p.m. I didn't know  
18 that.

19 MR. DILDAY: Because I had talked to  
20 Sonia. She and I both agreed we'd go until 6:00.  
21 That's my miscommunication to you guys. That's  
22 just miscommunication because I called from the  
23 court to tell them about what was going on, and  
24 when you got the letter, it said 2:00 to 5:00,

1 but we would have gone from 2:00 to 6:00.

2 MR. AKERSON: Again, I didn't know  
3 that, is what I'm saying.

4 MR. DILDAY: You didn't know it  
5 because it didn't state that.

6 MR. AKERSON: And you also say  
7 something regarding any uncertainty about who is  
8 to be deposed on May 11th in the letter to  
9 Mr. Vigliotti. Any uncertainty you had was all  
10 in your mind because my correspondence was clear.

11 Actually, it wasn't clear. You asked  
12 for permission if you could delete Terri from the  
13 May 11th deposition and insert Sonia, requesting,  
14 meaning, subject to your approval; thereupon,  
15 Mr. Vigliotti called to discuss that with you.  
16 So we did not know that for sure that  
17 Mr. Fernandez was coming as opposed to  
18 Mr. Pechner for the May 11th deposition.

19 You also say that the current  
20 deposition schedule was modified to accommodate  
21 our requests as defense counsel. That's not  
22 true. We just want to get it done. I would have  
23 been happy to do ten to five deposition days just  
24 to get it done so we can have fewer appearances,

1 fewer times, fewer travel time for all around,  
2 for everybody. So I don't necessarily -- .

3 And you also indicate that you've been  
4 extraordinarily accommodating to those demands in  
5 this case in spite of the discourteous and  
6 disrespectful correspondence and general attitude  
7 that you have received. And I need to say on the  
8 record that I know Mr. Vigliotti, having known  
9 him integrally for a couple of years, having  
10 worked closely together on a variety of cases,  
11 and he's probably the most respectful and least  
12 discourteous person I've met as a lawyer. So I  
13 do have to say I do take offense to that comment.

14 MR. DILDAY: Let me comment on that.  
15 That comment was drafted not based upon what you  
16 and John have done. Let me say clearly and  
17 unequivocally I think the two of you have been  
18 courteous and respectful. That comment is  
19 directly related to Mr. Porr, who in my opinion  
20 has been discourteous and disrespectful, and I  
21 apologize to the two of you for that because that  
22 is not the two of you.

23 MR. AKERSON: In fact, after a couple  
24 of Ms. Pechner's depositions you've grabbed me to

1 in essence thank me for my demeanor, which I  
2 think was very polite and caring. I was neither  
3 rude nor aggressive, yet still wanted her to  
4 answer the questions, but you did say those  
5 things after the first couple of days of  
6 depositions to me?

7 MR. DILDAY: I did.

8 MR. AKERSON: You have a doctor's  
9 appointment on May 18th. Again, I'm looking at  
10 your May 11th letter.

11 MR. DILDAY: What I'm trying to do on  
12 May 18th is see if I can schedule somebody to  
13 come with Terri on that date so we don't lose it.

14 MR. AKERSON: That's fine. I was  
15 going to say, if we need to work that out, we  
16 can, but you need to give us some alternative  
17 dates and availability.

18 MR. DILDAY: What I'm going to try to  
19 do is, by Monday, I should be able to give you a  
20 pretty good perspective of what we can do for the  
21 18th.

22 MR. AKERSON: Okay. From my view, my  
23 perspective, that's fine. I would appreciate if  
24 you could let me know or, again, if we need to



1 get it done on another date, I'd be willing to,  
2 you know, if you get me a few dates, we can work  
3 that out.

4 MR. DILDAY: I would like to do it  
5 then. My only concern is I would like to do it  
6 with Dawn, but Dawn does not drive.

7 MR. AKERSON: Who is Dawn?

8 MR. DILDAY: Dawn is the young lady  
9 that I had in court with me the last time, the  
10 new lawyer. She doesn't drive, and I've got to  
11 coordinate how she would get here. I may have  
12 her take the bus like I did that one day when my  
13 car was in the shop, but then I'd have to have  
14 Terri pick her up at the bus station.

15 MR. AKERSON: Lastly, in the  
16 paragraph -- last paragraph of the May 11th  
17 letter you indicate that you hope that you can  
18 bring this acrimony and discourteousness, which  
19 is unnecessary, to a close. If that's happened  
20 from myself or Mr. Vigliotti, I want to know  
21 about it.

22 MR. DILDAY: Okay. And it hasn't.

23 MR. AKERSON: Okay. Just for this  
24 mini record that we're creating, I just want to

1 put in May 10th -- excuse me -- your May 9th  
2 letter, May 10th, Mr. Vigliotti's May 10th  
3 letter, and your response of May 11th, and mark  
4 those as Exhibits 1, 2, 3 and 4, please.

5 (Deposition Exhibit Nos. 1 through 4  
6 marked.)

7 MR. AKERSON: Just going on, I'll end,  
8 Jim, I just want to get a couple of things clear.  
9 I think Judge Sorokin made it clear that he wants  
10 everything on the record if there's any dispute.

11 What's now been marked as Exhibit 4 to  
12 this attorney conference of May 12th, you  
13 indicate that you did not get -- it's indicated  
14 in here, if I can find it -- you indicate,  
15 Mr. Dilday, that you received deposition notices  
16 for the morning dates, but only a scheduled  
17 drawing for the defense counsel as to people  
18 scheduled on the various afternoon dates without  
19 your input or agreement.

20 I gather that's in part as to about  
21 the May 4th date why you and Ms. Pechner,  
22 Ms. James -- excuse me -- Ms. Fernandez didn't  
23 show. I gather that you didn't receive  
24 deposition notices from us.

1 I just want to show you a document,  
2 April 28th. That's a cover letter from my  
3 secretary, Donna Cormier, to you saying,  
4 "Enclosed with reference to the above-case,  
5 please find five deposition notices all scheduled  
6 in May at Revere City Hall."

7 And there were -- I have attached here  
8 some documents, one of which I've showed you,  
9 which is a May 4th deposition of Sonia Fernandez.

10 MR. DILDAY: I see them, but I don't  
11 have any recollection of getting them. They  
12 could have come in, but I don't have any  
13 recollection of seeing this. It's not to say  
14 that they didn't come. I just don't have any  
15 recollection of ever seeing them. I remember  
16 seeing all the other deposition notices, but not  
17 those.

18 MR. AKERSON: Okay. Mr. Porr?

19 MR. PORR: I was just going to say  
20 from my part, for the record, we received our  
21 copies of those in the mail on May 1st.

22 MR. AKERSON: If there's a problem  
23 from my end in my office, I'd like to know. It  
24 indicates 27 School Street, Suite 400, Boston,

1 Mass, 02108, okay. If we had your address wrong,  
2 we want to make sure --

3 MR. DILDAY: The address is correct.  
4 I just don't have any recollection of seeing  
5 them. I'm not saying they didn't come in. I  
6 don't have any recollection of getting them.

7 MR. AKERSON: I understand per your  
8 letter you or, rather, excuse me, per your recent  
9 filing of your opposition to the City of Revere's  
10 request for sanctions, which included dismissal  
11 requests, you had indicated that you were going  
12 to pay Mr. Vigliotti 500 and --

13 MR. DILDAY: Something. I forgot what  
14 what it was, yeah.

15 MR. AKERSON: -- for May 4th. Okay.  
16 I'm all set.

17 MR. PORR: All right. From my part  
18 I'd like to cover a couple issues, if we can.

19 First off, late yesterday afternoon we  
20 got a call from our auditor, city auditor, that  
21 she had received yet another fax from your  
22 office, Mr. Dilday. The day before, on May 10th,  
23 my secretary spoke with you to advise you of our  
24 correct fax number because the May 9th fax had

1 also been sent down to the auditor.

2 I notice on the fax cover sheet for  
3 your May 11th letter that you had my right fax  
4 number on it originally, but then it was  
5 scratched off and the auditor's number put in its  
6 place.

7 The city solicitor's letterhead, and  
8 you have received a boatload of letters from me  
9 in the last going on, what, three years, has the  
10 city solicitor's fax number on it. My secretary  
11 called you on May 10th and gave you that fax  
12 number, and I don't understand why yesterday's  
13 letter, which had the right fax number on it, had  
14 that scratched off and this letter was faxed  
15 downstairs.

16 But for the record, Mr. Dilday, the  
17 fax number for the city solicitor's office is  
18 (781) 286-8205 as was originally indicated on  
19 your fax of May 11 and for some inexplicable  
20 reason to me scratched off. So if we could get  
21 that problem corrected, I would sincerely  
22 appreciate it.

23 Next, I'm not going to get into who  
24 said what to whom when in terms of your

1 perception of my being discourteous or  
2 acrimonious or whatever else you want to describe  
3 or whatever label you want to place on it. I  
4 will simply stand on the records of the pleadings  
5 I have filed in the court and of the  
6 correspondence and of my conduct at the  
7 depositions as recorded by the court reporter.

8 You are free at any time to lodge any  
9 and all of that documentation with the court if  
10 you feel that there's any reason to do so, but I  
11 don't think I need to defend myself beyond that.

12 Now, I'd like to turn our attention  
13 for a moment to a 7.1 conference concerning last  
14 Friday and Ms. Pechner. In that regard, last  
15 Friday morning, off the record, we did a 7.1  
16 conference concerning Sonia Fernandez.

17 I notice in your opposition pleading  
18 which I saw this morning that your recollection  
19 of that conference and mine must vary  
20 substantially, because while I did, in fact, ask  
21 about dismissing Ms. Fernandez's case and asked  
22 for sanctions for the non-appearance, that was  
23 not the only thing I asked for.

24 When you indicated that you did not

1       incline to agree with me to dismiss her case, I  
2       proposed some evidentiary sanction. In other  
3       words, Sonia, since she didn't show up for her  
4       deposition, the issue there is her testimony, so  
5       an alternative sanction I proposed was then,  
6       fine, Sonia simply won't testify at trial because  
7       we can't get her to testify at depositions. You  
8       rejected that as well.

9               I then asked you if you knew of any  
10       other type of sanction, intermediate sanction,  
11       something less than dismissal, something less  
12       than evidentiary sanction that might be  
13       appropriate. I could think of none. You could  
14       think of none. Your opposition to my mind  
15       doesn't fairly reflect the full tenor of what we  
16       discussed last Friday.

17              So today's 7.1 I'm doing on the record  
18       concerning both Ms. Pechner's failure to appear  
19       yesterday and last Friday's deposition, and here  
20       is my position on that.

21              The failure to appear yesterday I  
22       think is inexcusable given the correspondence,  
23       the pleadings, all the documents. All of this  
24       was rehearsed in my motion for sanctions

1 concerning Ms. Fernandez. It all applies here.  
2 And so the failure to appear I think is  
3 inexcusable.

4 Ms. Pechner's conduct at the last  
5 deposition was also inexcusable. I was  
6 professional. I was courteous. I asked  
7 straightforward, very simple questions.

8 She was argumentative. She was  
9 combative. She was nonresponsive. She mocked  
10 me. And then she brought my wife into the  
11 deposition in terms of comments about my wife, or  
12 directed to my wife.

13 Nothing that I did during the course  
14 of the deposition invited any of that behavior.  
15 Twice during the deposition, once in the morning  
16 session and once in the afternoon session, on the  
17 record I appealed to you to bring the witness  
18 under control, and you declined both invitations.  
19 It's on the record.

20 So I have prepared and I'm ready to  
21 file a motion for sanctions somewhat similar to  
22 the one I filed concerning Ms. Fernandez with  
23 respect to Ms. Pechner that were obligated to me.

24 I'm proposing Ms. Pechner's case be



1 dismissed given her discovery violations and what  
2 I perceive is a continuing pattern. I suspect  
3 you'll be disinclined to agree to that. I would  
4 then suggest that Ms. Pechner simply not be  
5 allowed to testify at trial as an intermediate  
6 sanction. I suspect you'll be inclined to  
7 disagree with that as well.

8 I don't know what other sanction to  
9 propose as an intermediate sanction, though I'm  
10 more than willing to listen to any suggestions  
11 you might have, but I believe some sanction must  
12 be imposed for her conduct, and if we can't agree  
13 on a sanction, then by definition I have to file  
14 my motion.

15 Now, with respect to attorney's fees,  
16 Friday's deposition session was a complete  
17 disaster. And I have the record. I have gone  
18 through the record in excruciating detail. I  
19 have prepared exhibits to show the judge her  
20 misconduct.

21 So what I want to do in that regard  
22 is, first off, I want to be paid for the time  
23 spent in deposition all day last Friday to put up  
24 with that abuse. I want to be paid for the time

1 spent yesterday preparing the motion, which I  
2 probably will have to file because I suspect we  
3 will not reach agreement, and I want to be paid  
4 for the transcript that I had to order so that I  
5 could prepare an adequate motion. And we need to  
6 be reimbursed for the costs of driving out here  
7 in addition to our time. Now, I'm only billing  
8 or asking for compensation for one lawyer's time  
9 even though two lawyers from the City are here.

10 So I'm asking for \$5,800 in sanctions,  
11 which breaks down as \$5,000 for my time, 10 hours  
12 wasted last Friday, another eight hours spent  
13 preparing the motion and all the ancillary  
14 exhibits and documents, and another two hours  
15 which may be necessary for a hearing in court.  
16 I'm also asking for \$750 for the deposition  
17 transcript, and I'm also asking for \$50 for our  
18 costs in travel. So that's where the 5,800 comes  
19 from.

20 Finally, if the court does not agree  
21 to dismiss the case, I'm seeking a protective  
22 order, and I would like a protective order that  
23 would say a couple things. One, Ms. Pechner will  
24 simply answer the questions without mocking me,

1 without taunting me, without raising issues as to  
2 my wife or to other people that's not collateral.  
3 She will not be argumentative. She will simply  
4 answer the question responsively, and if she  
5 doesn't answer the question responsively, you for  
6 your part will ask for a recess, take her out in  
7 the hallway, explain to her her obligation to do  
8 so, and she will answer the questions  
9 responsively.

10 If she doesn't answer the questions  
11 responsively, as I tried to explain to you a week  
12 ago, I have to re-ask the question. The  
13 deposition transcript is longer. It's more  
14 expensive. The deposition session is longer and  
15 less productive, and I am being deprived of my  
16 time that has been somewhat limited to get the  
17 answers I'm entitled to.

18 So another thing I want in terms of a  
19 protective order is I want last Friday's day to  
20 not count as one of my days given my Judge  
21 Sorokin, and I want an additional day to make up  
22 for last Friday's day.

23 And I believe that covers all the  
24 things that concern me in terms of a proposed

1 motion in a 7.1 conference, and I welcome your  
2 interactive response in working something out.

3 MR. DILDAY: You're right in that I  
4 will not agree to your first two, and as far as  
5 the striking of the entire deposition, I couldn't  
6 agree to that, Walt.

7 MR. PORR: I didn't ask for that. I  
8 didn't ask to strike the entire deposition  
9 transcript.

10 MR. DILDAY: You're saying striking  
11 the day.

12 MR. PORR: I don't want it counted  
13 against me. Because of her behavior, because I  
14 had to constantly re-ask questions, because she  
15 went off the handle and everything else, I didn't  
16 get my full day, so I don't want that day to  
17 count against the allotment Judge Sorokin has  
18 given me.

19 MR. DILDAY: See, I would disagree  
20 with that, and the reason why I would disagree  
21 with that is because she answered the questions  
22 as best I think she could.

23 Now, you asked her questions that were  
24 very emotional and questions that went deeply

1 into her personal life and background that  
2 basically had no relevancy and materiality to the  
3 issues that took place at the police station.

4 MR. PORR: I would respectfully  
5 disagree with that.

6 MR. DILDAY: I understand that. For  
7 one thing, you asked her had she ever had an  
8 abortion.

9 MR. PORR: I never asked that  
10 question. I've got the transcript. I never even  
11 mentioned the word.

12 MR. DILDAY: Yes, you did.

13 MR. PORR: I did not, sir. I will  
14 stand by that record, sir. I know that record  
15 like the back of my hand. I spent all day  
16 yesterday in that record. The only person to  
17 mention that word was Ms. Pechner at the end of  
18 the day when she blew up and left.

19 MR. DILDAY: I don't have the record,  
20 but it's my understanding you mentioned something  
21 to her about an abortion.

22 MR. PORR: I did not, sir. I did not.

23 MR. DILDAY: Then if you didn't, then  
24 I stand corrected, but that's what I remember.

1                   MR. PORR: I invite you to review that  
2 record. I know it like the back of my hand, and  
3 I did not, sir.

4                   MR. DILDAY: And, you know, some of  
5 the things that you asked her I let go which I  
6 thought were not appropriate, and I think that  
7 because you were asking her issues about who she  
8 had sex with when she was in high school and  
9 things of that nature, which go long beyond even  
10 the medical history that Judge Sorokin gave us,  
11 which is from 1990, I think that they were  
12 inappropriate and irrelevant, and so -- I know  
13 you and I have different attitudes toward that  
14 regard --

15                  MR. PORR: Sure.

16                  MR. DILDAY: -- which is appropriate  
17 because we're on different sides of the aisle,  
18 but I think that she did the best she could. I  
19 think that you got a lot of information out of  
20 that deposition, and to ask for an additional  
21 date I think is inappropriate.

22                  MR. PORR: How about a half day?

23                  MR. DILDAY: A half day, I can go  
24 along with that.

1 MR. PORR: All right. So we agree to  
2 an additional half day.

3 MR. DILDAY: I can go along with that.

4 Now, on the whole issue of the  
5 monetary damages, you're looking for, what,  
6 \$5,000? Are you looking to bill your hours --  
7 your time at 250 an hour?

8 MR. PORR: That's probably a low rate  
9 for Boston.

10 MR. DILDAY: I understand the rate  
11 you're billing at, but you are paid a salary by  
12 the City of Revere.

13 MR. PORR: And the case law suggests  
14 that's not the relevant measuring indicator. My  
15 salary is irrelevant.

16 MR. DILDAY: Let me finish. You're  
17 paid a salary by the City of Revere. The time  
18 that you spend working on this case is not paid  
19 at the rate of 250 an hour by the City of Revere.

20 So what you're asking the plaintiff to  
21 do is to supplement Revere's payment of its  
22 salary to you and to increase what it pays you,  
23 and so you looked at what I agreed to pay  
24 Mr. Vigliotti for his time. He's private

1 counsel. He's billing his clients at an hourly  
2 rate, and he's not asking for nearly that much.

3 And I think when you look at the two  
4 and weigh them together, then it's kind of  
5 impractical to say that you should be compensated  
6 at a rate that's maybe 10 times the rate of him,  
7 who is doing a private attorney process and  
8 billing at an hourly rate, when you are being  
9 paid a salary for whatever you do.

10 If you can remember one time in court  
11 when we were talking about whether or not we  
12 could have some of the depositions in Revere  
13 because Sonia Fernandez has a phobia about long  
14 travelling, and today when she came in, she took  
15 some pills to calm herself down, your statement  
16 on the record was that you were on salary, that  
17 they were on an hourly rate, and so you didn't  
18 want to have their hourly rates run up because  
19 you were getting paid the same no matter what.  
20 And I tie that right in to what you're saying  
21 now.

22 MR. PORR: And I understand that, but  
23 the legal standard for reasonable attorney's fees  
24 awarded as sanctions is the prevailing market



1 rate regardless of my salary. So as a matter of  
2 law, I'm entitled to prevailing market rate  
3 regardless of what the City of Revere pays me.

4 Mr. Vigliotti could have asked for  
5 prevailing market rate regardless of what he  
6 bills his client if he so chose. That he chooses  
7 not to do so is his choice. I choose to ask for  
8 what the law says I can ask. That's a legal  
9 issue. That's not a factual issue.

10 But I'll meet you halfway. Since  
11 you're willing to give me an additional half day  
12 of deposition to make up for arguably a half day  
13 last Friday that was not productive, then instead  
14 of 5800 I'll take 2900, which is half.

15 MR. DILDAY: I love you. I'm still  
16 going to decline on that.

17 MR. PORR: Well, I think then, unless  
18 you have any other suggestions or comments, I  
19 think I've exhausted the 7.1 process in terms of  
20 the issues as I see them flowing out of last  
21 Friday and yesterday.

22 MR. DILDAY: So if I understand you,  
23 what you're looking for -- now, see, yesterday,  
24 understand that we were ready, willing and able

1 to conduct a deposition. We gave notice that we  
2 would substitute Sonia Fernandez for Terri  
3 Pechner-James. It's not us who cancelled it.  
4 The letter from Mr. Vigliotti said, "I consider  
5 the deposition cancelled."

6 Let me finish.

7 MR. PORR: I'm sorry.

8 MR. DILDAY: If we are in such a hurry  
9 to conclude these depositions, and on May 4th  
10 Ms. Fernandez was supposed to be deposed, clearly  
11 we would have been prepared to depose her or  
12 should have been prepared to depose her  
13 yesterday.

14 MR. PORR: The position of the  
15 defense, I think --

16 MR. VIGLIOTTI: I'll address it.

17 MR. PORR: Let me just, from my point  
18 of view, the problem is multi-fold. One, the  
19 schedule has been set. It's been set by court  
20 order. It's been set by agreement. It's been  
21 set by documentation. It's been set by notice.  
22 All of that is addressed in both my motion from  
23 last week and the motion I intend to file related  
24 to Ms. Pechner.

1           My problem with what happened over the  
2 last couple days is the unilateral decision to  
3 change it without a communication of good cause  
4 or reason to change it. Because given the  
5 accommodations made and the tightness of the  
6 schedule, one change in one location potentially  
7 wrecks the rest of the schedule, particularly  
8 since you've asked for an accomodation for the  
9 18th, particularly since the deposition of the  
10 4th was missed. It is my belief that we had no  
11 choice but to cancel the deposition given the  
12 confusion created and the inability to speak with  
13 you directly.

14           Now, Mr. Vigliotti can add in terms of  
15 his position, but the problem is, given the  
16 tightness of the schedule and the way it's been  
17 put together, you pull one, if you will, stick  
18 out from the bottom and the rest of it tends to  
19 come right down on top of it.

20           MR. DILDAY: That's my concern. The  
21 tightness of the schedule means that when I tell  
22 you that one can't make it, the other one will,  
23 then, yeah, it's two days in advance, but  
24 realistically, if the people here truly wanted to

1     depose Sonia Fernandez, she could have been  
2     deposed.

3             You're sitting at the table -- let me  
4     finish, John. You're sitting at the table today  
5     to depose Ms. Fernandez. Now, yesterday you  
6     would have been able to depose Ms. Fernandez had  
7     you chosen to.

8             MR. PORR: But Mr. Vigliotti and  
9     Mr. Akerson's firm are the ones that have taken  
10    the labor in terms of scheduling and conducting  
11    depositions, and I'm deferring to them in that  
12    context.

13            I'm just telling you my perception of  
14    what happened over the last couple days is that I  
15    agree with them, that the way this went down,  
16    they had no choice but to cancel the deposition.  
17    It's not -- constructively, I would say you  
18    cancelled it. Practically, they cancelled it.

19            MR. DILDAY: I would disagree.  
20    Practically and constructively, they cancelled  
21    it.

22            MR. VIGLIOTTI: Well, I would  
23    disagree, and, again, my voice message to you  
24    when I received the initial letter was clear,

1 that I need to discuss with you based on the fact  
2 that it depends on who you're deposing who is  
3 going to be there, myself or Mr. Akerson.

4 Believe it or not, I do have other  
5 cases on the schedule, and that's why we picked  
6 the days we picked, because they didn't conflict  
7 with my schedule, whether I had another case I  
8 had to do something on or get done.

9 So to unilaterally say I'm going to  
10 put Sonia in for Pechner affected me, because for  
11 me to go out there that day was a burden because  
12 I had other motions I was working on. I had  
13 other discovery issues I was working on. So it  
14 does affect who can get out there for the  
15 depositions. So that's why I left the voice  
16 message for you on the 9th saying I need to  
17 discuss it with you, because of that.

18 Obviously, I acknowledge you called me  
19 on the cell phone, but like I said, I couldn't  
20 make out the number. That's why I immediately  
21 called your office again. I believe that was  
22 detailed enough in my voice message on the 9th  
23 saying I couldn't agree with you to the  
24 substitution until I spoke to you because of

1     those issues.

2                     Therefore, not being able to speak  
3     with you directly, I felt, based on not knowing  
4     exactly who is going to be there, my schedule,  
5     that the time frame involved -- and, again, we  
6     only had knowledge that it was going to go from  
7     2:00 to 5:00 -- that it was not financially  
8     viable or productive to go out to Revere for less  
9     than three hours of scheduled deposition time. I  
10    know you said you would have went to 6:00. I  
11    know you acknowledged that. It wasn't  
12    communicated to us, so we didn't know that.

13                    And we can agree or disagree. There's  
14    no question in my letter I said I was cancelling  
15    the deposition. I don't disagree with that.  
16    It's in writing. But the facts that led me to  
17    make that decision was the inability to speak  
18    with you directly and the uncertainties we had  
19    about who was going to be there, because we never  
20    agreed to substitution in the scheduling.

21                    It was Terri's deposition that was  
22    scheduled. As you know, Mr. Akerson has been  
23    doing that. He was supposed to go out there. By  
24    substituting Sonia, that means I would have had

1 to go out there when I was working on discovery  
2 issues that I have a deadline on. And that was  
3 one of the reasons why we picked the days.

4 And I'll tell you, me and Mr. Akerson  
5 discussed this prior to that schedule who we were  
6 going to send out depo notices for, because of  
7 our schedules. As you know schedules, there are  
8 certain things on certain days you have to be at,  
9 and I just want to make it clear that is one of  
10 the main reasons why I felt it was in the best  
11 interests to send you that letter cancelling that  
12 deposition, not to be discourteous, not to be  
13 non-accommodating as I state in my letter, but  
14 because of scheduling and uncertainties and the  
15 time frame involved. I just want to make that  
16 clear.

17 MR. DILDAY: And I understand. That  
18 was clear in your letter, but, you know, so we  
19 don't beat this dead horse, when we look at the  
20 scheduling process, there's basically three  
21 lawyers doing the depositions. There's you,  
22 Mr. Akerson and Mr. Porr.

23 Now, the last time that we were in  
24 Worcester, Mr. Porr deposed Ms. Pechner-James.

1 Today we're in Worcester. Mr. Porr is deposing  
2 Ms. Fernandez. And so all I'm saying is that  
3 there may have been some uncertainty in your  
4 position and in your mind as to who was going to  
5 be deposed, and there may have been a logistical  
6 problem between you and Mr. Akerson as to what  
7 you needed to do, but there was always the  
8 constant, and that constant is Mr. Porr, who  
9 deposed Ms. Pechner-James last Friday prior to  
10 Mr. Akerson finishing his deposition of her, and  
11 now we have Mr. Porr deposing Ms. Fernandez prior  
12 to you completing your deposition of her. So  
13 Mr. Porr was always available to conduct the  
14 deposition.

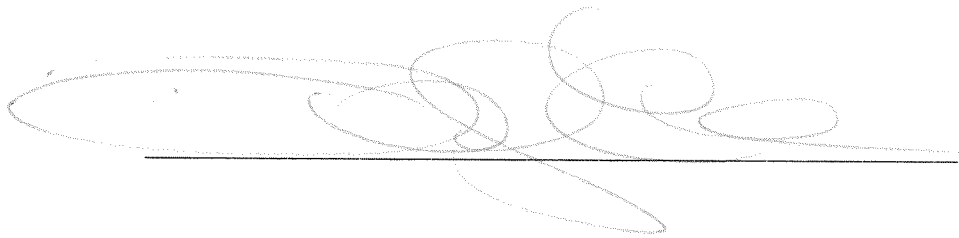
15 MR. VIGLIOTTI: Okay. I understand  
16 that, but, again, I'm not going to beat a dead  
17 horse. Logistically, from our point, I think we  
18 stated it in the letter. I stated it on the  
19 record, and I'm going to leave it at that in  
20 regards to our firm and our obligations to be  
21 there, and we'll leave it at that.

22 (Conference concluded at 10:40 a.m.)  
23  
24



CERTIFICATION

I, Dawn J. Cormier Bourn, hereby certify the foregoing to be a true and complete transcript of the oral evidence presented at the subject hearing.



DATED: 5-15-06

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